

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Bruce Reed Jr.,

Complainant,

vs.

Todd Ouellette,

Respondent.

**FINDINGS OF FACT,  
CONCLUSIONS,  
AND ORDER**

This matter came on before the undersigned panel of Administrative Law Judges to consider the appropriate disposition of the Complaint, which was filed on November 6, 2006. The Respondent was earlier adjudged to be in default after failing to appear at the probable cause hearings, and the allegation in the Complaint that the Respondent violated Minnesota Statutes § 211B.06 was deemed proved without further evidence.<sup>1</sup>

**NOTICE**

This is the final decision in this case, as provided in Minn. Stat. § 211B.36, subd. 5. A party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

**STATEMENT OF ISSUE**

Having adjudged Respondent in violation of Minn. Stat. § 211B.06, what is the appropriate disposition of the Complaint?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. Respondent, Todd Ouellette, ran unsuccessfully as a candidate for Winona City Council in 2006. He was challenging incumbent councilman, Gerry Krage, who was serving in Iraq during the campaign. Bruce Reed, Jr., managed Krage's campaign in his absence.<sup>2</sup>

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<sup>1</sup> See, Probable Cause Order, OAH File No. 8-6384-17629-CV (November 29, 2006).

<sup>2</sup> Respondent's Ex. 1 submitted November 10, 2006.

2. On November 6, 2006, Bruce Reed, Jr., filed a Complaint with the Office of Administrative Hearings alleging that the Respondent prepared and disseminated false campaign material in violation of Minnesota Statutes § 211B.06. Attached to the Complaint was a copy of a page from the Respondent's website, which was entitled "Winona Debate?" On this page, the Respondent discussed his proposal to debate Mr. Krage and charge an admission price of \$5 plus one can of soup, with all of the proceeds to be donated to local organizations that help underprivileged children. The web page stated in part the following:

So Why Do You Think That Councilman Krage Would Pass Up a Chance  
To Raise Funds for Underprivileged Kids?

Maybe He Doesn't Want Me Talking About Bruce Reed's Role In Extorting  
Over \$100,000 From The American Legion Veteran's Organization?

3. On November 7, 2006, Administrative Law Judge Eric Lipman determined that the Complaint set forth a *prima facie* violation of Minnesota Statutes § 211B.06 and ordered that the matter be scheduled for a probable cause hearing to be held by telephone conference at 9:30 a.m. on Monday, November 13, 2006. A Notice of and Order for Hearing was sent by United States mail and electronic mail to both parties on November 7, 2006.

4. On November 10, 2006, the Respondent submitted, by facsimile transmission, a five-page response to the Complaint. In it he argued that because the statement regarding Mr. Reed's alleged extortion of \$100,000 was phrased as a question, it could not be considered a false statement of fact. The Respondent also included a request that Administrative Law Judge Lipman recuse himself from presiding over this matter due to "possible conflicts of interests."

5. On November 13, 2006, at 9:30 a.m., the Complainant participated in the probable cause hearing by telephone on his own behalf without counsel. The Respondent failed to call into the telephone conference and participate in the probable cause hearing and no appearance was made on his behalf. The Administrative Law Judge waited approximately 15 minutes to begin the hearing while OAH Staff Attorney Mary Beth Gossman attempted to reach the Respondent by telephone without success. Ms. Gossman left a message on the Respondent's voice mail directing him to call into the scheduled conference.

6. At approximately 2:15 p.m. on November 13, 2006, the Office received an e-mail from a Kara Stroud on behalf of Mr. Ouellette. Ms. Stroud stated in her e-mail that the Respondent was ill and bed-ridden and that he was unable to leave his apartment to use a pay phone to participate in the probable cause hearing. Ms. Stroud also stated that the Respondent would be incapacitated for "at least a few more days."

7. On November 14, 2006, the Respondent sent an e-mail to the Office, which stated the following:

“Sorry I couldn’t make it to a phone on Monday morning. I was bed-ridden due to my disability since Friday evening. You got an email yesterday from my girlfriend, right? What exactly is the status of the case?”

8. On November 14, 2006, Administrative Law Judge Lipman issued a Notice and Order rescheduling the probable cause hearing in this matter to November 22, 2006, at 9:30 a.m. The Order further directed the Respondent to submit an affidavit of prejudice by 4:30 p.m. on November 20, 2006, explaining the basis for this belief that Administrative Law Judge Lipman was disqualified by reason of bias or prejudice. Lastly, the Order directed the Respondent to show cause at the rescheduled hearing why his failure to appear at the hearing on November 13, 2006, should not result in the entry of a default judgment against him.

9. The Notice and Order Rescheduling the Probable Cause Hearing and Order to Show Cause informed the Respondent in bold-face type that:

**A failure by the Respondent to participate and appear by telephone at this probable cause hearing may result in a finding that the Respondent is in default, that the Complainant’s allegations contained in the Complaint may be accepted as true, and that the Presiding Administrative Law Judge may dispose of the Complaint according to Minn. Stat. § 211B.35, subd. 2.**

10. The Order Rescheduling the Probable Cause Hearing and Order to Show Cause was sent to the parties by United States mail and sent to the Respondent by electronic mail. However, because the Respondent’s post office box number was listed incorrectly on the envelope, the Order was returned to the Office of Administrative Hearings. It was resent by U.S. mail on November 20, 2006. Nonetheless, the Respondent did receive a copy of the Order by electronic mail on or about November 14, 2006.

11. Pursuant to Judge Lipman’s Order of November 14, 2006, the Respondent filed an Affidavit of Prejudice by facsimile transmission on November 20, 2006.

12. By Order dated November 21, 2006, the Chief Administrative Law Judge denied the Respondent’s request to remove or disqualify Judge Lipman based upon the Respondent’s Affidavit of Prejudice. The Order further directed that the matter proceed to the probable cause hearing as scheduled at 9:30 a.m. on November 22, 2006. This Order of the Chief Administrative Law Judge denying the Respondent’s request to remove Judge Lipman was sent to the parties by United States mail and sent to the Respondent by electronic mail on November 21, 2006. In the e-mail attaching the Order, Staff Attorney Gossman notified the Respondent that the probable cause hearing would take place at 9:30 a.m. on November 22, 2006, as scheduled, and reminded the Respondent of the telephone number and numeric code he was required to enter in order to participate in the hearing.

13. On November 21, 2006, at 4:00 p.m., the Respondent sent a responsive e-mail to Ms. Gossman. The Respondent asked, “how can a question be considered a statement?,” and then closed the email by stating that he looked forward to the “same old politicized [sic] farcicle [sic] hearing as I always get.”

14. On November 22, 2006, at 9:30 a.m., the Complainant participated in the probable cause hearing by telephone on his own behalf without counsel. The Respondent failed to appear and participate at the probable cause hearing. He did not contact the Administrative Law Judge or Staff Attorney to request a continuance or to make any other response to the order to show cause. The Administrative Law Judge waited approximately 15 minutes to begin the hearing while OAH Staff Attorney Gossman attempted to reach the Respondent by telephone without success.

15. Because the Respondent failed to participate in the probable cause hearing as ordered, he is in default, and the allegation in the Campaign Complaint that the Respondent violated Minn. Stat. § 211B.06 by preparing and disseminating false campaign material is taken as true and is deemed proved without further evidence. The allegation is hereby incorporated into the Finding of Facts.<sup>3</sup>

16. By Order dated November 30, 2006, the parties were notified that this matter had been assigned to the undersigned panel of Administrative Law Judges to determine the appropriate disposition of the Complaint. The parties were further notified that they could submit to the panel by December 6, 2006, any written argument or documentation that they wished the panel to consider, limited to the issue of the disposition of the Complaint.

17. On November 30, 2006, the Respondent sent an email notifying the Office that he was “forced to flee Winona due to continued harassment by Winona’s crooked officials,” and that he had moved to Rochester. The Respondent also stated that he had decided it was pointless to take part in the second probable cause hearing because OAH Staff Attorney Gossman would not explain “how an obvious question could be considered a statement and the Judge is a GOP official who would never give me a fair hearing.”

18. On December 6, 2006, the panel received a written submission from the Respondent regarding the disposition of the Complaint. In it the Respondent stated that he believes the case should be turned over to the Winona County Attorney Chuck MacLean “so he can explain to a jury how a question can be considered a ‘statement.’” The Respondent also stated that he “will not be silenced by fines, jail or any other act of retaliation for my efforts to expose corruption in Minnesota.”

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

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<sup>3</sup> See Minn. Rules 1400.6000 (2005).

## CONCLUSIONS

1. Minn. Stat. § 211B.34 authorizes the undersigned Administrative Law Judge to consider this matter.

2. A complaint alleging a violation of chapter 211A or 211B must be filed with the Office of Administrative Hearings and finally disposed by the Office before the alleged violation may be prosecuted by a county attorney.<sup>4</sup>

3. The Respondent was given proper notice of the complaint and hearings in this matter and all relevant procedural requirements of law and rule were satisfied.

4. Minn. Stat. § 211B.01, subd. 2, defines campaign material to mean any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election. The Respondent's web page is campaign material within the meaning of the statute.

5. Minn. Stat. § 211B.06, subd. 1, provides, in part: "A person is guilty of a gross misdemeanor who intentionally participates in the preparation, dissemination ... of ... campaign material with respect to the personal or political character or acts of a candidate ... that is designed or tends to elect, injure, promote, or defeat a candidate for nomination or election to a public office ..., that is false, and that the person knows is false or communicates to others with reckless disregard of whether it is false."

6. The burden of proving the allegations in the complaint is on the Complainant. The standard of proof of a violation of Minn. Stat. § 211B.06, relating to false campaign material, is clear and convincing evidence.<sup>5</sup>

5. The Respondent is in default as a result of his failure to appear and participate at the scheduled Probable Cause hearing. The panel of Administrative Law Judges therefore takes the allegation set out in the Complaint that the Respondent prepared and disseminated false campaign material in violation of Minn. Stat. § 211B.06 as true and deemed proved.

6. The Respondent's violation of Minn. Stat. § 211B.06 constitutes grounds for the imposition of a civil penalty of up to \$5,000.<sup>6</sup>

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

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<sup>4</sup> Minn. Stat. § 211B.32, subd. 1 (2006).

<sup>5</sup> Minn. Stat. § 211B.32, subd. 4 (2006).

<sup>6</sup> Minn. Stat. § 211B.35 (2006).

## ORDER

IT IS HEREBY ORDERED that Respondent Todd Ouellette pay a civil penalty of \$600 by January 16, 2007, for violating Minn. Stat. § 211B.06.<sup>7</sup>

Dated: December 12, 2006.

/s/ Eric L. Lipman

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ERIC L. LIPMAN

Presiding Administrative Law Judge

/s/ Kathleen D. Sheehy

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KATHLEEN D. SHEEHY

Administrative Law Judge

/s/ Janice Culnane

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JANICE CULNANE

Administrative Law Judge

## MEMORANDUM

Respondent was adjudged to be in default by virtue of his failure to appear at two scheduled probable cause hearings as ordered. Therefore, the allegation in the Complainant that the Respondent violated Minn. Stat. § 211B.06 by preparing and disseminating false campaign material was deemed proved without further evidence.

In Respondent's written submission regarding the disposition of the Complaint, he argues that a question cannot be a false statement of fact. The Respondent's web page provides:

So Why Do You Think That Councilman Krage Would Pass Up a Chance  
To Raise Funds for Underprivileged Kids?

Maybe He Doesn't Want Me Talking About Bruce Reed's Role In Extorting  
Over \$100,000 From The American Legion Veteran's Organization?

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<sup>7</sup> The check should be made payable to "Treasurer, State of Minnesota" and sent to the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401.

These words, regardless of their punctuation, amount to a statement that Councilman Krage would not engage in debate with the Respondent because Krage's associate, Bruce Reed, extorted more than \$100,000 from the American Legion. Putting a question mark at the end of the statement does not transform it into an interrogatory or place such a statement beyond the reach of the Fair Campaign Practices Act. To hold otherwise would effectively repeal Minn. Stat. § 211B.06; because any false statement, no matter how outrageous or defamatory, could be disseminated with impunity if it were placed in the form of a question. The Legislature did not intend such an absurd result.

Having found that the Respondent violated Minn. Stat. § 211B.06, the Panel may make one of several dispositions.<sup>8</sup> The panel may issue a reprimand, may impose a civil penalty of up to \$5,000, and may refer the complaint to the appropriate county attorney for criminal prosecution. The panel concludes that Respondent's violation was deliberate and unapologetic, and that the deliberate nature of the misconduct militates against the imposition of a more modest penalty. In fact, in his final written submission, the Respondent states that he will not be silenced by fines or jail and that he "stands by his question."

After considering the entire record in this matter, the panel determines that a civil penalty of \$600 is an appropriate disposition.

E.L.L., K.D.S., J.M.C.

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<sup>8</sup> Minn. Stat. § 211B.35, subd. 2.